Passed

Scott E-37—38,004—4-11-48.

Home (1947) Department.

(1)

Ms. R SERIES.

G.O. NO. 4691

Dated 19-12-1947

[Despatch Abstract.]

F.V. 8/130

Rel. C. 239/47 Agl. Dated 15-11-47

From:

K.N. Anantharaman Esq., I.C.S.,
District Magistrate, Bellary.

To:

The Secretary to Government,
Home Department, Madras.

HOME DEPARTMENT
20 NOV 1947
ASSISTANT SECRETARY TO GOVERNMENT

ADDITIONAL ASSISTANT SECRETARY
20 NOV 1947
HOME DEPARTMENT

Sir,

Subject: CRIMINAL APPEAL - C.A. 25/47 of the file of Sessions Judge Bellary relating to C.C. 63/47 on the file of Sub divisional Magistrate, Bellary Accused Sanna Onkaramma of Bellary - acquitted - Appeal.

...

In C.C. 63/47 on the file of Sub divisional Magistrate, Bellary, the Inspector of Police, C.I.D. branch, Bellary filed a charge-sheet against Suruna Sanna Onkaramma of Bellary for violation of sec. 7 of the Essential Supplies (Temporary Powers) Act 1946. After trial, the Sub Divisional Magistrate Bellary found the accused guilty and sentenced him to pay a fine of Rs. 150/- in default to undergo R.I. for 3 months. Against the orders of the Sub divisional Magistrate Accd, the accused preferred an appeal to the Sessions Judge, Bellary. The Sessions Judge Bellary allowed the appeal and reversed the sentence of the lower Court on the ground that there was no evidence to prove that an order fixing the maximum price was passed, that the authority who passed the order prescribed a certain mode of publication and that it was published in the mode prescribed.

2. The Public Prosecutor, Bellary who was consulted before in a number of similar cases, is of opinion that under the Essential Supplies (Temporary powers) Act, 1946, the provisions of Rule 119 of D.C.I. Rules are omitted and that all rulings under the D.C.I. Act do not apply so far as the new Act is concerned in view of the omission from the act, the provisions of Rule 119. He further says that oral evidence has been adduced to the effect that the notification which was contravened has been duly published, and that the court can take judicial notice of such publication.

3. I entirely agree with the Public Prosecutor, Bellary and am of opinion that this is a fit case for moving the High Court in appeal.

4. Two copies of the Judgments of the lower Court and the appellate court, and the opinion of the Public Prosecutor Bellary are enclosed.

K.N. Anantharaman
District Magistrate.

For District Magistrate.

P.L. 16.11.

Home Department

Endorsement. No. 8.4130F/47-1 dated 25.11.47

Received 25/11/47
21 NOV 1947

Referred to the Public Prosecutor, Madras for remarks on the proposal of the District Magistrate, Bellary. The reply to this reference should be sent not later than 10-12-47.

for Secretary to Govt.

25/11/47

22/11/47

To

The Public Prosecutor
Madras

(with H[illegible]
[illegible]
to be returned
with reply
[illegible]

F2

87621/1/3/47

W.L.ETHIRAJ Esq., C.I.E.,
Bar-at-Law.,
Public Prosecutor, Madras.

To

The Secretary to Government,
Home Department, Madras.

Opn. No. 125/47. Dated 1st December 1947.

Sir,

Sub: Appeal against acquittal - C.A. 25/47, Sessions Judge, Bellary - C.C. 63/47, S.D.M. Bellary - Forwarding opinion.

With reference to Endorsement No. 84130 F/47-1, Home Dept., dated 25-11-47, I have the honour to forward herewith my opinion in the above matter.

2. The papers received for reference are returned herewith.

I have the honour to be,
Sir,
Your most obedient servant,

W. L. Ethiraj.
Public Prosecutor.

Opinion.

The Sessions Judge Bellary set aside the conviction and sentence

passed by the Sub Divisional Magistrate, Bellary on the accused for the offence under Section 7 of Essential Supplies (Temporary Powers) Act 1946. The accused is alleged to have sold jaggery at a price higher than the one fixed by Notification. The acquitta by the Sessions Judge is based on the fact that there was no proof of the order by which the price was fixed or of its due publicatio It could have been better if the copy of the Notification had been filed in the trial court. The notification is published in the Official Gazette. The Sessions Judge could have taken judicial notice of the same. The acquittal by the Sessions Judge is not correct.

I am of opinion that an appeal against acquittal is likely to be successful.

Public Prosecutor.

R/

Home Department

Ms. No. 4691 dated 18/12/47

Criminal Appeal - Appeal against acquittal - Bellary district - C.A.No. 25 of 1947 on the file of the Session's Judge, Bellary - Application - Sanctioned.

Read: From the D.M., Bellary, C. 2320/47 M1, dated 15-11-47.
From the P.P., Madras, Opinion No. 125/47, dated 1-12-47.

...

C R D E R:

Under section 417 of the Code of Criminal Procedure, 1898, the Public Prosecutor, Madras is requested to present an appeal to the High Court against the acquittal by the Sessions Judge, Bellary of the appellant in C.A. No. 25 of 1947 on his file.

To the D.M., Bellary
(with copy of P.P's Opinion at pp. 15-16 c.f.
To the Public Prosecutor, Madras.

p.t.o.

Note: The statutory period of limitation for filing an appeal against acquittal is six months. But it is only in the most exceptional cases that appeals against acquittals are filed after the expiry of the three months' period. In this case, the judgment was delivered on 28-8-47, and the three months' period has expired on 27-11-47. The statutory period of 6 months will expire on 27-2-48. The Public Prosecutor, Madras is of opinion that an appeal against acquittal is likely to be successful. For orders whether this may be considered as an exceptional case.

If so, the draft order overleaf is for approval.

Draft may issue.

Issue

D.M. sent his reference within nearly three months after acquittal. This should be pointed out to him

Home Department

Memo. No. 4441F/48-1 dated 16.1.48

Criminal Appeal - Appeal against acquittal - Bellary Dt. - C.A.No. 25 of 1947 on the file of the Sessions Judge, Bellary - Application - Delay in submission of proposals.

Ref: G.O.No.4691, Home, dated 19-12-47.

The Judgment in C.A.No. 25 of ~~1947~~ (94) on the file of the Sessions Judge, Bellary was delivered on 28-8-47; ~~in regard to the filing of an appeal~~ the Government were addressed ~~on~~ till 15-11-47, ~~in regard to the filing of an appeal from Bellary 3 months after acquittal.~~ The delay in the submission of proposals in this case is brought to the notice of the D.M., Bellary.

NOTE With reference to D.S's orders on page 6 in G.O. at (A), the draft memo ~~is~~ also is for approval.